

REMARKS

Claims 1-9, 12-19, 22-29, 31-40, 58 and 59 are pending in the application, claims 10, 11, 20, 21, 30, 41-57, and 60-66 being canceled herein. Claims 1, 12, 14, 18, 24, 29, and 58 are the only independent claims.

Restriction Requirement

The Examiner has finalized a restriction requirement made in a prior office action. In response, applicant has canceled non-elected claims 41-57 and 61-66 without prejudice to applicant's right to pursue those claims in a divisional application.

Interview

Applicant wishes to thank the Examiner for the courtesy of the telephone interview of February 28, 2005. Prior to the interview, the Examiner was provided with a set of proposed amended and new claims. During the interview, the Examiner indicated that he might have to reject proposed amended claim 1 on the grounds that applicant had not adequately demonstrated that the claimed invention worked as claimed by applicant. There was also some discussion as to original claim 58. However, the applicant and the Examiner could not arrive at any agreement with respect to patentability. The claims previously indicated by the Examiner as containing allowable subject matter were not discussed. The other proposals provided to the Examiner as to amending or supplementing the claims were also not discussed.

Applicant disagrees with the Examiner as to the requirement that applicant demonstrate the operability or utility of his invention. As the undersigned understands the current state of the case law, the burden is on the Examiner to provide evidentiary support for rejecting applicant's claimed invention on the grounds that applicant's claimed invention is purportedly inoperative to achieve the described results and thus lacks utility. Applicant reserves the right to take this position in another, continuation or divisional, application should the Examiner make such a rejection official. In this Amendment, applicant amends the claims to include only that subject matter already indicated by the Examiner as being allowable. Applicant reserves the right to pursue claims directed to additional or broader subject matter in a subsequent application.

Claims Objections

Claims 20 and 21 stand objected to under 37 C.F.R. 1.75©, as being of improper dependent form for failing to further limit the subject matter of a previous claim. The Examiner requires applicant to cancel the claims or amend the claims to place them in proper dependent form or rewrite the claims in independent form. The Examiner points out that the removal of hair is not related to the treatment of damage to skin due to exposure to X-ray or UV radiation.

In response to the Examiner's objection to claims 20 and 21, those claims are canceled herein.

Claims Rejections - 35 U.S.C. § 112

Claims 1-28 and 37 stand rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The Examiner specifically maintains that the term "the individual" as recited in claim 1 does not have sufficient antecedent basis in the claim.

In response to the rejection of claims 1-28 under 35 U.S.C. § 112, second paragraph, claim 1 has been amended herein to incorporate antecedent basis for the term "the individual."

With respect to claim 37, the Examiner points out an apparent conflict with the claim from which it depends. One pulse conflicts with greater than one pulse.

In response to the rejection of claims 37 under 35 U.S.C. § 112, second paragraph, that claim has been amended herein to depend from claim 33 rather than claim 34, thus eliminating the inconsistency pointed out by the Examiner.

Claims Rejections - 35 U.S.C. §§ 102 and 103

Claims 1-5, 9, 16, 17, 20, 21 and 29 stand rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 6,514,243 to Eckhouse et al.

Claims 1 and 25-28 stand rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 6,676,655 to McDaniel.

Claims 6, 7, 8, and 40 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Eckhouse et al.

Claim 10 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Eckhouse et al. in view of U.S. Patent Publication No. 2003/0216795.

Claims 22, 23, 38, 39, 58, and 59 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Eckhouse et al. in view of U.S. Patent No. 6,730,113 to Eckhardt et al.

The Examiner has indicated that claims 30-36 and 60 would be allowable if rewritten in independent form to include all of the limitations of the base claim and any intervening claims.

The Examiner has also indicated that claims 11-15, 18, 19, and 24 would be allowable if rewritten to overcome the rejection under 35 U.S.C. § 112, second paragraph, and to include all of the limitations of the base claim and any intervening claims.

In response to the indication by the Examiner that certain claims contain allowable subject matter, the claims have been amended herein so that all independent claims contain subject matter indicated by the Examiner as being allowable. Applicant does not agree with the Examiner's application of the prior art to applicant's claimed invention and reserves the right to pursue additional claims directed to the present invention in subsequently filed continuation and/or divisional applications. None of the references cited by the Examiner disclose or suggest a prophylactic method of applying optical radiation to skin surfaces to reduce, if not eliminate, the likelihood that those skin surfaces will be damaged by exposure to a source of Xray or ultraviolet radiation.

Claim 1 has been amended herein to incorporate subject matter from claims 10 and 11. Claim 1 is equivalent to claim 11 rewritten in independent form to include all of the limitations

of the base claim (claim 1) and any intervening claim (claim 10). Pursuant to the indication by the Examiner, amended claim 1 is patentable over the prior art.

Claims 12, 14, 18, and 24 have each been amended to incorporate the limitations of claim 1. These claims are now rewritten in independent form to include all of the limitations of the base claim (claim 1) and any intervening claim (none). Pursuant to the indication by the Examiner, amended claims 12, 14, 18, and 24 are patentable over the prior art.

Claim 58 has been amended herein to incorporate the limitations of claim 60, which has been canceled. Accordingly, claim 58 is equivalent to claim 60 rewritten in independent form to include all of the limitations of the base claim (claim 58) and any intervening claim (none).

Pursuant to the indication by the Examiner, amended claim 58 is patentable over the prior art.

Conclusion

For the foregoing reasons, independent claims 1, 12, 14, 18, 24, 29, and 58, as well as the claims dependent therefrom, are deemed to be in condition for allowance. An early Notice to that effect is earnestly solicited.

Should the Examiner believe that direct contact with applicant's attorney would advance the prosecution of this application, the Examiner is invited to telephone the undersigned at the number below.

Respectfully submitted,

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